Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Application by SBC Communications Inc.,	**)**	
Southwestern Bell Telephone Company, and	**)**	
Southwestern Bell Communications Services,	**)**	**CC Docket No. 00-4**
Inc. d/b/a Southwestern Bell Long Distance	**)**	
for Provision of In-Region, InterLATA	**)**	
Services in Texas	**)**	

JOINT REPLY COMMENTS OF ALTS AND THE CLEC COALITION[1]

By:

Jonathan Askin
General Counsel
THE ASSOCIATION FOR
LOCAL TELECOMMUNICATIONS
SERVICES
888 17TH Street, N.W.
Washington, D.C.
(202) 969-2587
(202) 969-2581 FAX
jaskin@alts.org

Robin A. Casey
Eric H. Drummond
Susan C. Gentz
CASEY, GENTZ & SIFUENTES, L.L.P.
919 Congress Avenue
Suite 1060
Austin, Texas 78701
(512) 480-9900
(512) 480-9200 FAX
edrummond@phonelaw.com

Attorneys for ALTS and CLEC Coalition

February 22, 2000

[1] For purposes of these comments, the members of the CLEC Coalition are Birch Telecom, Inc., ICG Communications, Inc., NEXTLINK Texas, Inc., and Time Warner Telecom, L.P. Each of these CLECs actively participated in Project No. 16251 before the Public Utility Commission of Texas.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Application by SBC Communications Inc.,	**)**	
Southwestern Bell Telephone Company, and	**)**	
Southwestern Bell Communications Services,	**)**	**CC Docket No. 00-04**
Inc. d/b/a Southwestern Bell Long Distance	**)**	
for Provision of In-Region, InterLATA	**)**	
Services in Texas	**)**	

JOINT REPLY COMMENTS OF ALTS AND THE CLEC COALITION

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY

The Department of Justice ("DOJ") is correct in its assessment that Southwestern Bell Telephone Company's ("SWBT") Application shows substantial progress in the development of local competition in Texas.[2] It is undeniable that the local exchange market in Texas is considerably more open than it was two years ago, when SWBT first filed its draft Application with the Public Utility Commission of Texas ("TPUC"). Through the dedication and commitment of the TPUC and its staff, and the significant efforts of many Texas CLECs, most of the steps necessary to implement the section 271 checklist have been taken. Under the federal Telecommunications Act of 1996 ("FTA" or "Act"), however, the burden is on SWBT, not other parties, to ensure that its local market is irreversibly open to competition.[3]

Although it came close, SWBT did not fully meet the fourteen-point checklist before filing its Application for in-region, interLATA authority in several very critical areas. The record before this Commission establishes that SWBT's Application suffers from discrete, serious failures to implement all the FTA's competitive checklist items, including the nondiscriminatory provision of interconnection trunking, access network elements – OSS, and unbundled loops, among other checklist items. SWBT's shortcomings, as detailed herein and in the initial comments filed by ALTS, the CLEC Coalition, other CLECs, and the DOJ demonstrate why SWBT's Application must be rejected.

---

[2] DOJ Evaluation at p. 1. The DOJ's evaluation of SWBT's Application is fair-minded and even-handed. More importantly, the DOJ's recommendation is consistent with the substance and spirit of the Federal Telecommunications Act of 1996 and this Commission's Bell Atlantic New York Order and other Commission 271 orders.

[3] Memorandum Opinion and Order *Application by Bell Atlantic New York for Authorization under Section 271 of the Communications Act to Provide In-Region InterLATA Services in The State of New York*; CC Docket No. 99-295, FCC 99-404 (rel. Dec. 22, 1999) at ¶ 44 ("Bell Atlantic New York Order").

SWBT's Application fails to provide sufficient evidence that its network and operational systems are capable of supporting any significant level of competition in the Texas local exchange market, now or in the immediate future. In certain critical areas it appears that SWBT's Operations Support Systems ("OSS") are not even designed to provide CLECs with the same level of performance as SWBT provides to its retail divisions. Unfortunately, the limited nature of the testing of SWBT's OSS makes it impossible to document the true extent of CLECs' problems with SWBT's support systems. Telcordia failed to evaluate SWBT's back-end systems, properly review SWBT's documentation, and evaluate SWBT's manual processes. In addition, Telcordia failed to conduct root cause analysis of many of the problems that both CLECs and Telcordia identified.

These failures are a significant shortcoming given that even Telcordia observed that use of SWBT's OSS by CLECs frequently results in extremely high levels of manual processing and manual rejects. The lack of mechanized flow-through of orders and reliance on manual processing discriminates against CLECs in violation of Checklist Item (ii). SWBT's systems result in reject notices being returned late, and orders that are already significantly delayed due to manual rejection are further delayed due to the manual processing required to correct them, even when SWBT is the sole cause of the problem. SWBT's current level of manual processing of orders increases the number of erroneous rejects sent by SWBT and undermines SWBT's ability to timely and properly handle orders at commercial volumes. Moreover, because many of these rejects are not processed in a systematic manner, following specific guidelines, the reasons for the rejects are so unclear that CLECs and SWBT are virtually precluded from determining the root cause.

Moreover, as recognized by the DOJ, SWBT's inability to adequately provision hot cuts consistent with the requirements of Checklist Item (iv) provides an additional basis for rejection

of SWBT's Application. Numerous CLECs have documented SWBT's hot cut problems.[4] SWBT has not and cannot prove that, as of the time of its filing,[5] it has resolved the significant and systemic problems in its ordering and provisioning systems, as described by the many different parties filing comments. Without such proof, the Commission cannot reasonably find that the Texas market is irreversibly open to competition. Despite the presence of many committed, experienced CLECs in Texas, competition in Texas will never flourish if CLECs cannot count on obtaining nondiscriminatory access to SWBT's interconnection trunks, network - OSS, and unbundled loops, in a reliable, consistent manner. The FTA requires nothing less.

---

[4] *See*, NEXTLINK Barron Affidavit at ¶¶ 26-28; ICG Communications Rowling Affidavit at ¶¶ 23-24; CapRock Communications Thompson Affidavit at ¶¶ 18-21; and AT&T Comments at pp. 28-40.

[5] Since its January 10, 2000 filing, SWBT has submitted over 2,000 pages of *ex parte* filings in an inappropriate attempt to bolster the record and correct deficiencies in its Application. This "moving target" record significantly increases the burdens on the Commission and parties to fully analyze all of the *ex parte* submissions and respond to SWBT's Application. Consistent with its prior 271 orders, the Commission should only consider the facts that existed as of the date of SWBT's filing. To do otherwise would set a very dangerous precedent for future 271 applications.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Application by SBC Communications Inc.,	**)**	
Southwestern Bell Telephone Company, and	**)**	
Southwestern Bell Communications Services,	**)**	**CC Docket No. 00-04**
Inc. d/b/a Southwestern Bell Long Distance	**)**	
for Provision of In-Region, InterLATA	**)**	
Services in Texas	**)**	

JOINT REPLY COMMENTS OF ALTS AND THE CLEC COALITION

The CLECs that filed comments on SWBT's 271 Application are unanimous in their belief that the Application is premature and incomplete. SWBT's Application does not provide sufficient evidence that all items on the 271 Checklist are satisfied and that the Texas market is irreversibly open to competition. The Commission's order granting Bell Atlantic – New York's application confirmed the standards that SWBT's Application must meet. SWBT has met many standards and is close to meeting most others, but it is not there yet. SWBT's Application must be denied.

I. SWBT Does Not Provide Nondiscriminatory Access to Interconnection Trunks, as Required by Checklist Item (i).

The ability to obtain interconnection trunks on a reasonable and timely basis is critically important to CLECs.[6] The comments filed by the Department of Justice ("DOJ"), e.spire Communications, Inc., COMPTEL, NTS Communications, and CapRock Communications, as

[6] DOJ Evaluation at p. 44.

well as those of ALTS and the CLEC Coalition, demonstrate the problems that CLECs have experienced in obtaining interconnection trunks from SWBT in Texas.

As noted in the Time Warner Telecom, L.P. ("TWTC") affidavit of Kelsi Reeves, if CLECs are not able to continue to expand their interconnection and trunking arrangements *in a timely manner to meet customer demand*, competition will not be able to survive.[7] Nondiscriminatory access to interconnection trunks is essential to CLECs' abilities to expand their service offerings and "grow" their local phone business. However, in the more than three years in which TWTC and SWBT have been provisioning interconnection trunks between their networks, TWTC has experienced repeated difficulties in obtaining interconnection trunks in a timely manner and in sufficient quantities to support its business.[8] These trunking problems have caused TWTC customers to experience an unreasonable amount of blockage for extended periods of time and has also caused TWTC to turn away business and to limit its marketing efforts because it could not afford to add new customers where it knew the lack of trunking capacity would result in inferior service.[9]

In early 1998, TWTC was experiencing an unusually high level of blocking in its Austin market and repeatedly issued Trunk Group Service Requests (TGSRs) requesting that SWBT augment the trunk groups that were blocking.[10] These requests were continually ignored by SWBT and only when the situation became the subject of TPUC concern during the TPUC's 271 hearing did SWBT begin to take responsive actions to alleviate the blocking. As a result,

---

7 TWTC Reeves Affidavit at ¶ 13.

8 *Id.* at ¶ 14.

9 *Id.*

10 *Id.* at ¶ 15.

TWTC's primary reason for participating in the collaborative process in Texas was to help establish performance measures that would monitor SWBT's performance and ensure that monetary penalties for non-compliance would be imposed.[11]

During most of 1999, TWTC had great difficulty in obtaining sufficient trunking to keep up with its growth and convert to two-way trunking. SWBT's policy of provisioning only 8 T-1s per day and its insistence on establishing trunks at the end office and limiting or refusing TWTC's attempts to establish tandem trunks caused a crisis environment. Although SWBT sometimes agreed to increase the trunk limit and allow TWTC to order more than 8 T-1s per day, its standard policy was not to allow TWTC to augment its tandem trunks *unless the network was experiencing blocking*. Similarly, e.spire Communications found that even in instances where e.spire demonstrated that it was experiencing blockage and an inability to serve new customers, e.spire was given only a fraction of the capacity that it requested.[12] Another CLEC, NTS Communications, had *all* of its December 1999 trunk orders in Amarillo held for a lack of facilities.[13] CapRock Communications has also experienced delays in obtaining interconnection trunks from SWBT.[14] Unfortunately, as noted by the DOJ and discussed below, the performance data recently released does not fully capture these problems.[15]

---

[11] TWTC had attempted to negotiate performance measures within its interconnection agreement with SWBT but SWBT was unwilling to enter into a voluntary agreement that included such standards. At the time, SWBT was also unwilling to allow CLECs to adopt the measures and penalties approved as part of the AT&T/SWBT mega-arbitration. TWTC Reeves Affidavit at ¶ 16.

[12] e.spire Wong Affidavit at ¶ 14.

[13] NTS Elliott Affidavit at ¶ 16.

[14] CapRock Thompson Affidavit at ¶¶ 8-17.

[15] DOJ Evaluation at p. 47.

During the collaborative process, TWTC committed considerable resources towards assisting SWBT and the TPUC with designing measures to capture SWBT's performance. While the CLECs agreed that SWBT should not be held accountable for poor performance that was beyond its ability to prevent, *e.g.*, a CLEC's failure to properly forecast or order additional capacity, it was critical that SWBT's sub-par performance be accurately captured and reflected in the performance data. Unfortunately, SWBT's Application shows that it is trying to shift the blame for its poor performance in the Houston market to a CLEC, *i.e.*, TWTC.

Just prior to the November 16, 1999, TPUC Open Meeting, TWTC learned that SWBT was attempting to have TWTC data removed in order to obtain the TPUC's favorable recommendation.[16] SWBT provided a number of different explanations as to why SWBT believed the data should be excluded, but TWTC has never been provided with an explanation consisting of enough detail to be verified. Because TWTC does not have performance measurements in its current negotiated interconnection agreement, the exclusion of this data has no direct effect on TWTC, *i.e.*, TWTC is not eligible to receive performance penalties. However, exclusion of the Houston data has tremendous impact on SWBT's Application for interLATA relief. Only by excluding TWTC's data can SWBT represent to this Commission that its trunking performance meets the required standards. Between July and October 1999, TWTC Houston experienced significant blocking in Houston. At one point, blocking occurred on TWTC's trunks every day for five continuous weeks. During this time TWTC was trying to get more tandem trunks and more T-1s provisioned per day. SWBT occasionally cooperated by not enforcing its policies but its failure to respond immediately and consistently prolonged the blocking and left TWTC with no assurance that the situation would not occur again, and if it did,

[16] TWTC Reeves Affidavit at ¶ 29.

that it could be addressed in a timely manner. Considering TWTC's continuing efforts to obtain additional trunking, SWBT's explanation that the blocking in Houston occurred because TWTC failed to order a sufficient number of trunks is simply absurd. Moreover, TWTC still has no enforceable assurance that it will be able to obtain sufficient trunking quantities in the future nor do the performance measures capture this reality.

TWTC acknowledged that it shares some of the responsibility for the trunking problems and has always been willing to have performance data eliminated from consideration where the problems were caused by TWTC.[17] However, TWTC strongly believes that had it been able to order tandem trunks in the quantity it requested when it requested them, most of these problems could have been avoided and the crisis situation that overburdened both companies could have been prevented.[18]

In order to ensure nondiscriminatory access to interconnection trunks, it is essential that the performance measurements relied upon by regulators and CLECs truly reflect SWBT's actual performance. By monitoring Telecordia's test of SWBT's OSS implementation, CLECs became aware of several problems with the way SWBT collects data for the trunking measures. First, SWBT excludes data from the measures if, according to SWBT, the data was exempt from penalties based on the exemptions built into the business rules. SWBT excludes this data *without identifying it to the CLECs*. All blocking should be reflected in the reports and SWBT should notify CLECs of data that it is excluding, along with the reasons the data is excluded in order to verify that the exclusions are applied correctly. ALTS and the CLEC Coalition also disagree with the way SWBT collects this data. SWBT measures blocking by looking at one busy hour

---

[17] *Id.* at ¶ 26.

during one week each month. This method of measuring blocking does not even come close to accurately capturing all blocking occurrences.

Second, SWBT has interpreted an exclusion to PM No. 70 to exclude data if a CLEC's actual traffic usage was more than 25% over its most recent forecast as applying on a disaggregated basis, *i.e.*, if a CLEC's traffic to an individual trunk group exceeded 25% of the most recent forecast. No carrier, however, has enough data to accurately predict the calling patterns of future customers. While it is possible to forecast traffic on a macro basis, it is not possible to forecast at the micro level with the same degree of accuracy. The business rule for PM No. 70 does not state that the 25% exclusion applies on the end office "micro" level, however, that is how SWBT interprets it despite CLECs' understanding that the exclusion applied to the total forecast. It is critical, therefore, to determine how this exclusion is applied. The only fair way to apply the standard is to have it apply on a macro level, or require SWBT to accept and respond to quarterly forecasts that allow CLECs to accurately forecast to the micro level as it obtains the data that provides this information.

Third, the performance measure for missed due dates does not capture due dates that were missed because of SWBT's lack of facilities. If a CLEC places orders that are within the quantities forecasted but SWBT does not have facilities, the orders are put into held status and the due date is not set until SWBT has facilities. These orders should be captured as missed due dates. The new interim measurement No. 73.1 will only penalize SWBT if it cannot provision the trunk orders within *101 days*, and does not recognize that this far exceeds the 20 business days in which SWBT is required to provision trunk orders. PM 73.1 should be revised to eliminate the additional 90 days by which SWBT is allowed to miss a due date due to lack of

[18] *Id.*

facilities without showing poor performance. Without this change, SWBT could miss every due date for over three months and not appear to be out of compliance with PM 73.1.

ALTS and the CLEC Coalition concur with the DOJ's observation that SWBT's reported trunking data do not provide a reliable indication of SWBT's actual performance.[19] If CLECs are to rely on the performance measures to ensure that SWBT continues to operate at the level required by the standards after this Commission grants SWBT interLATA relief, these changes must be made prior to that grant. The changes to PM No. 70 proposed by TWTC will ensure that SWBT is not required to pay penalties if the poor performance is not a result of its own actions. But the change will ensure that all parties, and not just SWBT, are able to validate that the exclusions are applied properly. The proposed change to PM No. 73.1 (eliminating the 90 days) will capture the instances when SWBT is not able to meet a due date because of lack of facilities.

As shown in the TWTC affidavit of Nick Summitt, TWTC can document $183,700.00 in lost monthly revenue. This is over $2,204,400.00 in lost revenue in the first year alone. Although SWBT does not pay TWTC performance penalties, if TWTC had been eligible for penalties, SWBT would have paid TWTC a one-time penalty of $50,000.00.[20] If the fault truly lays with TWTC, the penalty of lost revenue is automatically enforced, with no ability to reduce or "cap" these loses. If SWBT was at fault, the $50,000.00 in penalties is no match for the harm caused by the failed performance.

Because CLECs are necessarily growing at a fast rate, and because it is impossible to predict with exact accuracy the traffic patterns of future customers on a six months' basis, CLECs should be allowed to amend their forecasts to reflect the actual growth and traffic

[19] DOJ Evaluation at p. 47.

[20] TWTC Summitt Affidavit at ¶ 12.

patterns of their customer base. In order to advance the goal of facilities-based competition, the performance measurements must take into account the construction of facilities. As CLECs enter a market they rely heavily on tandem interconnection. As traffic volumes increase and networks are constructed, direct end-office trunks, not just tandem trunks, should be deployed. Measures for trunking should recognize the fact situation of constructing facilities. If the majority of trunks are destined for the tandem, forecasts are less complicated. At the time the PMs were created, the majority of CLECs, including TWTC, trunked to the tandem and CLECs' forecasts focused on the anticipated need for tandem capacity. If SWBT is going to require forecasts to be accurate to within 25% of the end office "micro" level, SWBT should be required to accept quarterly forecasts, as requested by TWTC.[21] The introduction of competition changes the way telecommunications networks are managed. SWBT must revise its practices that do not recognize these changes.

II. SWBT Does Not Provide Nondiscriminatory Access to its OSS in Compliance with Checklist Item (ii).

A. The Telcordia Testing Study Does Not Support SWBT's Application.

This Application presents the Commission with a crucial threshold question, the answer to which will greatly impact future 271 applications, as well as SWBT's current pending Application. That is, what should be the proper scope and depth of the testing of an RBOC's operational support systems? ALTS and the CLEC Coalition urge the Commission not to "lower the bar" it reasonably set in the Bell Atlantic New York Order to sanction the less blind, more narrow, limited testing used in Texas. The record is replete with the shortcomings of the Texas

[21] TWTC Reeves Affidavit at ¶ 31.

testing. The proper scope and depth of the testing is an issue too critical to new market entrants to allow a less blind, less comprehensive and less independent test than the KPMG test.[22]

The CLEC Coalition agrees with Allegiance Telecom and other parties, including the Department of Justice, that Telcordia's conclusion that SWBT's OSS is commercially ready is *not* supported by the record.[23] While providing some useful evidence of the functionality and capacity of SWBT's OSS, the Telcordia Final Report was severely limited in that it did not address a significant number of issues identified during the test, did not assess the impact that identified problems would have on CLECs, and made little or no effort to investigate the root cause of service-affecting problems.[24] Telcordia did not build an ordering/provisioning interface as KPMG had done, but instead relied upon AT&T's UNE-P and MCI's UNE-L EDI interfaces.[25] The sole use of AT&T's and MCI's interfaces necessarily meant that the interfaces used by most other CLECs in Texas were not properly evaluated.[26]

In addition, the Master Test Plan was both ill-defined and artificially narrow in scope. Among other reasons, because testing was allowed to begin long before the Master Test Plan was

---

[22] Bell Atlantic New York Order at ¶ 100.

[23] Allegiance Telecom determined that because Telcordia never established independence from SWBT, routinely shared its findings with SWBT before doing so with the TPUC and CLECs, and did not independently validate performance measurement data, the Telcordia study is unreliable. Allegiance Comments at p. 9. Unlike the BA-NY filing in which several CLECs, including NEXTLINK, supported Bell Atlantic's Application, there are ***no*** CLECs in Texas that support the SWBT Texas filing. CLECs filing in opposition include the CLEC Coalition, e.spire, Pilgrim, IP Communications, Covad, Rhythms, NorthPoint, AT&T, MCI WorldCom, BlueStar and CapRock Communications, among others.

[24] DOJ Evaluation at p. 4.

[25] MCI WorldCom Comments at p. 40. The advantage of having the third party tester build its own interface as part of the testing protocol is that it permits the third party tester to independently evaluate problems and to establish the root cause.

[26] DOJ Evaluation at p. 4. Unlike the test in New York, the Telcordia test was not broad enough to test the wholesale support processes for other CLECs with different business plans and market objectives.

completed, it was not clear to the CLEC participants whether certain critical processes would be evaluated. More importantly, the limited scope of the test essentially assured that manual processes would *not* be evaluated.[27] Telcordia's test of SWBT's operational procedures was superficial because Telcordia "closed" far too many issues prematurely, without root cause analysis and often without adequate resolution. For instance, Telcordia closed Issue Number UL-RT-13, Late Call-Backs from the LSC, without analysis of the root causes or identifying what procedures SWBT needed to implement to solve the problem. Indeed, even when Telcordia observed that SWBT representatives handling such calls had expressly specified a specific time frame for returning calls, but did not follow their own procedures. Telcordia noted that "in several instances the SWBT Representative did not respond in the time frame they had specified and the CLEC then initiated another call to find out the status of the request."[28] Thus, unlike the detailed and open discussions that took place between KPMG and CLECs operating in New York, which exposed and ultimately resolved mission critical problems, many significant issues unearthed during the Telcordia testing were summarily closed without any root cause determination being made.[29]

---

[27] Telcordia did not conduct analyses of the retail side of SWBT's OSS processes and failed to evaluate the "folders" process, or the splitting of an LSR into three service orders. *Id.* at pp. 43-44; an example that provides enlightening insight into Telcordia's analysis is that in spite of the fact that 11% of one CLEC's UNE-P customers lost dial tone service during cutover, Telcordia suggested that the "next seven steps" would resolve this issue, although the next seven steps did not address UNE-P conversion issues. Moreover, SWBT's performance with regard to UNE-P conversion must be distinguished from the admirable job done by Bell Atlantic and noted by KPMG. TRA Comments at p. 20.

[28] Telcordia Final Report, Attachment A, A-55 to A-57. Telcordia also found that "Similar occurrences were observed during interactions between the LOC [Local Operations Center] and the CLEC." *Id.* at A-57. In spite of observing these problems first hand, Telcordia determined that the status of the issue should be "**Closed No SWBT CHG**." *See Also*, Comments of TRA discussing the closing of this and other critical issues at pp. 17-18.

In sum, almost all commenters have noted the deficiencies in the OSS testing used in Texas and the failure of certain performance measurements to accurately capture SWBT's performance. The CLECs' commercial experiences have revealed significant flaws in the performance measures and testing process, something that was taken into account by KPMG in New York. The DOJ correctly observes that "the defects in SBC's implementation of its performance measures have become apparent only as CLECs have had access to performance reports, and an opportunity to detect inconsistencies between SBC's reports and their own experiences. If SBC had more carefully considered the operational experience of CLECs regarding the performance measurements and processes, whether through Telcordia or otherwise, these defects in SWBT's OSS could have been detected and corrected earlier."[30]

The narrow scope of the Telcordia test simply makes it unreliable as a means of judging the commercial readiness of SWBT's OSS. As the DOJ concluded, Telcordia's review does not provide an adequate basis for determining that presently reported SBC performance data are reliable.[31] The major problems with Telcordia's review and the testing process generally were:

- The Master Test Plan did not include an evaluation of SWBT's manual processes and its back office systems. As noted by the DOJ, more than half of the UNE-loop orders submitted electronically via EDI or LEX interfaces are manually processed by SBC's LSC.[32]

---

[29] Most of Telcordia's review of SWBT's OSS focused on calculations addressing a very small subset of performance measures. More importantly, Telcordia's review was based upon an outdated version of the definitions of the business plan. Telcordia explained that while they examined all classes of PMs with at least 10 data entries, they relied on Business Rules Version 1.5. Even when Telcordia needed the information from SWBT to determine which version of the business rules were in effect for each PM for each of the three months of data collection, Telcordia reported that "**SWBT was unable to provide the information.**" Telcordia Final Report at p. 152, 6.4.2.1 (emphasis added.); *see* also DOJ Evaluation at p. 6, fn 7.

[30] DOJ Evaluation at p. 6, fn 6.

[31] DOJ Evaluation at p. 6.

[32] DOJ Evaluation at p. 37.

- The electronic interface used by most CLECs was not tested, *i.e.*, LEX.

- Issues should not have been closed without confirmation that the problem would not occur again. Unlike New York, where KPMG kept testing problem areas until all parties were convinced that the problem would not re-occur, Telcordia "closed" an issue simply because it did not occur during the two-week re-test period. The fact that the issue did not re-occur during the re-test period does *not* mean that the root cause of the problem had been determined and the that the issue was completely and permanently resolved.

- Telcordia did not seek input from CLECs in the open, forward-looking manner conducted by KPMG. Unlike Telcordia, KPMG had frequent communications with the CLECs as it attempted to identify the root cause of a problem and resolve it. This occurred in an open forum where the problems were identified, documented, and discussed by all the parties, not just the RBOC and testing entity.

- The test was "less blind" than the KPMG test because SWBT knew that all orders placed through the EDI interfaces were coming from the test participants owing to the fact that only AT&T and MCIW had operational EDI interfaces.

- The test was "less independent" because Telcordia consistently relied on SWBT for explanations of the problems encountered and most solutions and closed items based purely on the promises of SWBT's subject matter experts to do better the next time.

- The test was "less comprehensive" because Telcordia tested only a small number of the performance measures; provided no information on critical measures like trunking, billing and number portability; did not evaluate SWBT's back end OSS systems; and did not evaluate SWBT's manual processes.[33]

- A record of the meetings and discussions that occurred during the test was not made for the benefit of those who would be evaluating the adequacy of the test and for other CLECs who did not participate in the test.

- The fact that Staff did not permit filings throughout the project made it difficult for the TPUC to be aware of both general and specific concerns CLECs had about the test.

B. Critical Problems with Manual Processes.

As in other states after passage of the 1996 Act, many CLECs in Texas began operating in the local exchange market by reselling SWBT's services or using other strategies until they were able to build or purchase their own facilities. Once facilities-based carriers began operating

---

[33] *Id.* at p. 6, fn 7.

in Texas, however, it became clear that SWBT's OSS functioned at a level that essentially slowed and, in some instances harmed, market entry. CLEC concerns about ordering and provisioning issues were expressed to SWBT and the TPUC once Docket No. 16251 was initiated to address SWBT's draft Application for in-region, interLATA authority. It is indeed unfortunate that many of the same service-affecting problems raised by facilities-based CLECs almost two years ago are still being discussed today.

Some of the areas identified by the TPUC as significant problems in 1998 were discussed in the TPUC's Comments filed with this Commission on January 31, 2000, and a significant percentage of the problems that currently plague CLECs involve the use of manual processing. Manual processing of orders is not, by itself, the dispositive test of whether SWBT's OSS are inadequate. However, when manual processing is viewed in the context of the problems described by CLECs in the record before the Commission, it is obvious that SWBT's ability to provide the necessary pre-ordering and ordering connectivity, even at low order volumes, is inconsistent and unreliable.[34] Moreover, there is little in the performance data upon which SWBT relies in its Application that shows that SWBT will be able to perform at even a minimal level once it has to scale up for commercial volumes.[35]

---

[34] Although Telcordia determined that many of the manual activities used to process CLEC queries and orders also affect SWBT's retail operations, certain of SWBT's manual processes ensure that only CLECs will experience the processing errors associated with the manual activity. TRA Comments at p. 18.

[35] For FOCs returned via EDI October through December 1999, SWBT's performance fell below the benchmark for timeliness of return, with SWBT's performance worse in November and December than in October. DOJ Evaluation at p. 38; s*ee* also, NEXTLINK Barron Affidavit at ¶¶ 12-17 and AT&T Comments at p. 64. Further, DSL.NET claims that because performance measures for SWBT's xDSL provisioning were not established until the issuance of the December 1999 Arbitration Award, no meaningful data is available to measure SWBT's performance under these standards. DSL.NET Comments at p. 8.

In its Evaluation, the TPUC identified several problem areas in SWBT's performance that CLECs consider to be indicative of significant, systemic problems. For instance, for PM No. 5, which evaluates the percentage of FOCs returned in "X" hours for percentage of FOCs for Simple Residential and Business, manual processing "UNE-Loop (1-50),"[36] SWBT missed the benchmark three out of the four months.[37] Even for the submeasure which evaluates the percentage of FOCs returned for Switchports-manual, SWBT again was only able to make the benchmark for *one* month, missing the benchmark for September through November 1999.[38] This level of performance is extremely distressing, customer-affecting and symptomatic of serious systemic problems.

SWBT's inability to meet its benchmarks for manually processed orders would not be as critical if not for the fact that SWBT's OSS requires SWBT to heavily rely on manual processing.[39] Even at relatively low volumes of orders, SWBT has been unable to perform at a level that does not create serious impediments for CLECs. Because SWBT's OSS are in reality geared toward manually processing most CLEC orders,[40] it is essential to the development of competition in Texas for SWBT's manual processes to function at parity with its retail processes or meet the TPUC's benchmarks.

---

[36] PM No. 5 calculates the percentage of FOCs returned within a specified time frame from the receipt of a complete and accurate service request to the return of a confirmation notice to the CLEC.

[37] TPUC Evaluation at p. 40. The Texas Commission stated that although this was poor performance, the performance under this measure did not indicate a systemic problem solely because "volumes declined for manual orders." *Id.*

[38] *Id.*

[39] *See*, Initial CLEC Coalition Comments at p. 16, discussing the fact that most CLEC orders are in fact processed manually and DOJ Evaluation, pp. 37-38.

Indeed, based on SWBT's February 1, 2000, *Ex Parte* filing[41] for PM No. 5 "manual switchports" SWBT missed the benchmarks June through December.[42] This data is applicable to SWBT's five-state region for August through November but is Texas-specific for December. More importantly, according to SWBT's filing, SWBT's performance for this particular submeasure *progressively* worsened from August to November and *significantly* worsened for December.[43] For PM No. 7.1 "Percent Mechanized Completions Returned Within 1 Day of Work Completion" LEX, from May to December SWBT *never* even made the benchmark.[44] Although most of the data for this submission is based on SWBT's five-state region, it is indicative of SWBT's Texas performance and, among other things, certainly serves to refute SWBT's contention that it is ready to receive section 271 authority throughout its five-state region.[45]

---

[40] *See*, Comments of AT&T at p. 66.

[41] SWBT filed tracking/chart results, dated February 1, 2000, which describe January to December 1999 performance data for a number of Performance Measures based on its five-state region. December data is supposed to be Texas only. Although SWBT's continued filing of additional *ex parte* submissions essentially makes a review of its Application a moving target, much of the additional *ex parte* information suggests that its OSS are not commercially ready and do not meet the requirements of the statute's checklist items. *See* also, SWBT's February 7, 2000 *Ex Parte* Submission.

[42] Even for the submeasure evaluating the return of FOCs on a mechanized basis using LEX, SWBT was unable to meet the benchmark standards. For PM No. 5 "Percent FOCs Received within 'x' hours-mechanized LEX," SWBT missed the benchmarks August through November. *Id.* at 271-No. 56.

[43] *Id.* at 271-No. 5f.

[44] *Id.* at 271-No. 7.1. Please note that this SWBT chart only contains results from May 1999 to December 1999.

[45] While SWBT's *ex parte* submissions contain additional information, much of the information may, in fact, be unsupportable once it is reconciled by CLECs. For instance, for PM Nos. 5-17 the performance data submitted by SWBT failed to include 58% of Covad's orders. Based on SWBT's January 14 *ex parte* submission, SWBT has not been "at parity" for PM Nos. 5-17 for five of the six months and performance has deteriorated since September 1999. Covad Comments at pp. 27-28.

The poor results provided in SWBT's February 1, 2000, and even in SWBT's February 7, 2000, *Ex Parte* filings are consistent with CLECs' experiences. In addition, the data contained in SWBT's February 8, 2000, *ex parte* filing clearly supports CLEC arguments that the reject rate for CLECs using SWBT interfaces is extremely high and problematic.[46] As evidenced by SWBT's February 8, 2000 filing, on a monthly basis anywhere from 24% to 42% of all CLEC LSRs are rejected. Indeed, for the month of September 1999, for CLEC "D," using EDI, out of 2,347 LSRs submitted, 98% were rejected. In October 1999, of the 334 LSRs submitted by CLEC "C," using EDI, *every* order was rejected. Some CLECs using LEX found that nothing less than 43% of their orders were rejected each month over the four month study period.[47] Unfortunately, what was only hinted at in the Telcordia Report - that some substantial portion of these rejections is directly attributable to SWBT's manual processes and inability to properly staff the LSC - has become all to obvious once even limited information was provided by SWBT.

It is even more troubling that some of SWBT's processes that appear to be automated are, in fact, flawed and ultimately subject to manual processes.[48] For example, SWBT is required to provide Firm Order Commitments ("FOCs") in a timely manner. Performance Measure No. 5 purports to track the timely return of FOCs.[49] However, many of SWBT's electronic FOCs are

---

[46] *See*, Initial CLEC Coalition Comments at p. 19; SWBT *Ex Parte* Submission dated February 8, 2000 containing charts describing reject rates and volumes for all CLECs using ED/and LEX interfaces, by carrier, for the months of August through November 1999.

[47] CLEC "E" using LEX found that over the space of four months its rate of rejected LSRs ranged from 42.9% to as high as 57.9%.

[48] *See*, Initial Comments of CLEC Coalition at pp. 31-34 and ICG Rowling Affidavit at ¶¶ 24-27.

quickly followed by jeopardy notices that change the due date, indicating that the processes that return a FOC to the CLEC do so before all of SWBT's internal systems are checked on an automated basis.[50] When SWBT's systems conduct checks of downstream databases for criteria such as facilities availability, the FOC is put into "jeopardy" status, rendering the original electronic FOC meaningless.[51]

NEXTLINK's data for January, which captures FOCs returned via the EDI interface shows that 12.76% of initial FOCs were later put into jeopardy status.[52] This means that almost 13% of the time, NEXTLINK must return to its new customer and revise a promised due date because SWBT has changed the date.[53] Not only does this jeopardize NEXTLINK's credibility with the customer, it also causes costly rework for NEXTLINK and creates additional administrative burdens.[54]

In addition to SWBT's poor performance related to the return of reject and jeopardy notices, SWBT recently imposed a cumbersome manual process regarding the provision of its 2733 records that delays receipt of these records.[55] The delay may be due to shortages in the LSC or unnecessary and inefficient coordination between SWBT's Houston and Dallas offices.

---

49 *See*, Initial CLEC Coalition Comments at pp. 39-40, regarding questions related to the reliability of this data. Also *see*, NEXTLINK Barron Affidavit at ¶¶ 11-16.

50 Attached, NEXTLINK Barron Reply Affidavit at ¶ 3.

51 *Id.*

52 *Id.* at ¶ 6.

53 *Id.*

54 *Id.*; *see* also, ICG Rowling Affidvit at ¶ 20.

55 A 2733 is the report number of a Customer Service Record ("CSR") for customers with more than 100 lines. SWBT discontinued promptly faxing 2733 records to NEXTLINK approximately three weeks ago.

In any event, CLECs are now forced to wait a week or more for an accurate hard copy version to arrive by mail.[56]

SWBT's delay in providing a hard copy by fax, or an accurate electronic version, means that CLECs are prevented from providing timely bids to their customers. Because a paper copy of the 2733 is needed to ensure the accuracy of the number of lines and features, often CLECs cannot timely and accurately process customer orders. SWBT's inability to provide an accurate electronic version, or to promptly fax 2733s often requires CLECs to create a bid and then correct the bid sometime later after the hard copy arrives by mail. Thus, SWBT is not providing accurate and timely provision of 2733 records, which are essential for CLECs to properly provide service to their end use customers.[57]

C. Significant Ordering and Provisioning Problems Persist for UNE-P Providers and Associated Performance Data are Misleading.

The comments of AT&T, Birch Telecom, and CapRock Communications describe significant problems with SWBT's wholesale performance in providing CLECs with the UNE-Platform. The problems experienced by these CLECs include frequent service outages upon conversion, inability to service trouble on customer lines, and loss of features such as hunting.[58]

---

[56] NEXTLINK Barron Affidavit at ¶ 7.

[57] NEXTLINK has even had to have SWBT representatives on the phone with NEXTLINK customers to request a fax copy. If the bid is based on inaccurate information, it may require supplemental orders and further delays. NEXTLINK Barron Affidvit at ¶ 8.

[58] These difficulties arise from the inability of SWBT to keep each of the three orders involved with the migration of a retail line (C, N, and D) properly related. AT&T Comments at p. 12; when Birch first discussed these issues with SWBT, Birch was told that the problem had been caused by SWBT's manual errors into the RSSO process, the process used to properly relate the three orders. Birch Tidwell and Kettler Affidavit at ¶ 63. For a list of other problems associated with UNE-P ordering, see *Id.* at ¶¶ 63-91; CapRock Communications also noted in its affidavit that although it submits a single order to migrate

The DOJ's evaluation notes that service outages experienced by UNE-P providers in Texas are a very serious problem and that additional commercial experience is warranted before SWBT's Application is approved.[59] As recognized by the DOJ, the magnitude of the conversion problems have increased recently and SWBT's reliance on manual processes to handle UNE-P orders makes it *more likely* that as order volumes increase, the scope of these problems will become disproportionately greater.[60]

The DOJ notes that current experience in New York shows that at high order volumes, system problems that increase manual work in the order processing center make it more difficult for an RBOC to timely confirm orders, or to provide reject notices in a timely manner.[61] ALTS and the CLEC Coalition agree with the DOJ that SWBT's order processing center work force model for November and December 1999, combined with recent events in New York, suggests that "Telcordia did not take into account the degree to which systems problems can overwhelm asserted, but not tested, manual processing capabilities."[62]

---

a line for UNE-P, SWBT separates the single order into three orders. *See*, CapRock Communications Thompson Affidvit at ¶ 24.

59 DOJ Evaluation at pp. 49-50.

60 *Id.* at p. 51.

61 *Id.* at p. 52, citing New York PSC Order at 3 and DOJ Ex. 4.

62 *Id.* at fn 144, p. 52. The LSC is responsible for generating the C, N, and D orders on many LSRs and for updating the orders when a CLEC submits a supplementary LSR after customers request a new due date. If the LSC unsuccessfully changes the due date for all three orders, or fails to input the proper code to coordinate the orders, the orders will complete at different times and a service outage may occur. AT&T Comments at p. 11.

A very significant issue for CLECs that provide service using UNE-P is the problems caused by SWBT's triple order process.[63] The affidavit of Elizabeth A. Ham describes the ordering process used by SWBT to migrate a SWBT retail customer line to a UNE-P provider, which produces three orders in SWBT's back end systems.[64] There are a number of problems associated with SWBT's three order conversion process, including loss of dial tone, an inability to make outbound calls, fall out of directory listings, loss of certain vertical features, loss of multiple line hunting[65] and double billing.[66] These problems were so extensive for Birch last year that they were forced to file a complaint with the TPUC in order to seek relief.[67] Commercial experience suggests that SWBT is unable to maintain a logical relationship among the three orders to ensure that the orders process in tandem and in the proper sequence.[68]

---

[63] Although only UNE-P providers' orders are split by SWBT into three orders (D-Disconnect, N-New and C-Change), orders by UNE-L providers are similarly split into two orders (Disconnect and Change) and result in the same types of problems experienced by UNE-P CLECs, e.g., service outage, double billing, etc. The multiple orders problem was discussed in the initial comments of the CLEC Coalition at pages 27-28.

[64] *See*, SWBT Ham Affidavit at ¶ 196.

[65] For instance, Birch was made aware that it was receiving an unusual number of trouble tickets related to failures associated with a customers' hunt groups. Ultimately, SWBT confirmed that the root cause was a new software upgrade to SWBT's legacy system that was made without any prior notification to CLECs that an upgrade had been made. Birch Tidwell and Kettler at ¶¶ 81-85.

[66] DOJ Evaluation at p. 50. Frequently, Birch customers complain because they are still being billed by SWBT although their local service has been turned over to Birch. The problem appears to be that SWBT is not processing the "D" order to completion until long after the "C" Order has been completed, preventing SWBT from updating its billing database. Birch Tidwell Affidavit at ¶¶ 63-91.

[67] Although Birch initially tried to resolve these issues informally, after Birch experienced loss of dial tone for its customers for more than two consecutive months, Birch was forced to file a complaint with the TPUC. *See,* Birch Tidwell and Kettler Affidavit at ¶63, Attachment B. Incredibly, the TPUC states in footnote 298 of its Evaluation that it is unaware of further evidence reflecting service outage problems experienced during UNE-P conversions. However, as evidenced by the meeting minutes and hearing transcripts provided as Attachments D, M, T, AA and T to the Birch Tidwell and Kettler Affidavit, the problems resulting from the C, D., and N order process, including service outages and directory listing fallout, are ongoing problems of which SWBT is fully aware.

Only CLEC orders are subject to the triple order process and that this process significantly increases the likelihood of loss of features, billing problems and service outages.[69] Neither Telcordia nor SWBT have been able to show that SWBT's retail orders are subject to the same service-affecting triple order process.[70] While SWBT in the past has blamed problems associated with converting lines to UNE-P providers on CLECs, claiming that they were providing incorrect address information, in fact, there is complete concurrence among CLECs that address discrepancies alone have nothing to do with the problems stemming from SWBT's triple order process.[71] Rather than simply transferring the correct address information to all three orders, SWBT transfers the address from the LSR to the "C" order, but populates the "N" and "D" orders with addresses obtained from a database upload.[72] There is no evidence in the record

[68] *See*, Birch Tidwell and Kettler Affidavit at ¶¶ 48-57; in many cases, problems with the "N" or "C" orders caused CapRock's orders to be delayed or rejected, yet the corresponding "D" order was not held. As a result, CapRock end users had their service disrupted, and were left with absolutely no service. CapRock Communications Thompson Affidavit at ¶ 25.

[69] Birch Tidwell and Kettler Affidavit at ¶ 55.

[70] The only realistic solution to the problems associated with converting lines to UNE-P may be to eliminate the three order process, for the same reasons that SWBT eliminated the two order process for resale orders. AT&T Comments at p. 13; recently, SWBT contended that any system fix that would prevent orders from being disassociated would delay necessary system fixes for LIDB. Thus, SWBT seeks to force CLECs to choose which service-affecting problem they want fixed, regardless of whether both system fixes are necessary and mission critical. Birch Tidwell and Kettler Affidavit at ¶ 68.

[71] As noted by CapRock, most CLECs request a customer service record ("CSR") before submitting an LSR to SWBT to request service for their customers. CapRock has found that the CSRs often do not contain complete or accurate information regarding the customer's current service arrangements, creating significant problems once SWBT disconnects and reestablishes the service. These problems result in services not functioning properly and it may take days or weeks to identify and eliminate the problems. CapRock Communications Thompson Affidavit at ¶¶ 27-29.

[72] The problems of improper address input compounds the problems associated with the three orders becoming disassociated. See AT&T Comments at p. 12.

that SWBT's retail processes undergo this type of deconstructing and reconstructing process.[73] Therefore, to the extent SWBT's retail processes are not subject to the service-affecting triple order process, SWBT's wholesale service to CLECs is not being provided at parity.[74] The problems experienced by CLECs in the provisioning of UNE-P orders clearly further demonstrate SWBT's problems in processing multiple orders and its inability to provide nondiscriminatory access to OSS and to provision UNEs in a nondiscriminatory manner.

As shown by the Birch Tidwell–Kettler affidavit, SWBT's performance measurement data reflects better than actual performance as a result of SWBT's three orders conversion process. For Birch's Texas data, where Birch uses only UNE-P, the flow through performance data for Birch reflects an inflated level of performance. SWBT's demonstration of the data in its Application is misleading, and SWBT inaccurately concludes that this triplicate order process is nondiscriminatory. SWBT notes that the percentage of trouble reports for UNE-P data is less than the trouble reports for all data and the trouble reports issued related to UNE-P orders is lower than that for SWBT.[75]

SWBT's data provides an inaccurate picture of SWBT's performance because not all consequences of the three order process are captured by PM No. 65, "Trouble Report Rate." Examples of SWBT's performance that is not captured include, LIDB records in conflict status,

---

[73] In CapRock Communications Thompson Affidavit at ¶ 30 "Because only CLEC orders are processed using the CSR information, errors in the data discriminatorily impact CLECs. Moreover, if not for SWBT's refusal to migrate service 'as is' and its decision to 'disconnect' existing service before installing new service using UNEs, the problem would not exist at all."

[74] SWBT identified at least seven areas that represent potential processing problems associated with the three order process during the User Forum meeting December 1999. SWBT did not explain many of the problems, nor did they propose solutions. AT&T Comments at pp. 12-13.

[75] Ham Affidavit at ¶ 201.

double billing problems, and Call Notes disconnections. Also, SWBT's Trouble Report Rate excludes "Disposition 13 reports" (no trouble found – NTF)). Unfortunately Birch cannot quantify or confirm whether SWBT is overusing this category because Birch's Trouble Reports frequently cannot be viewed due to the fact that the "D" order has not posted.[76] In addition, SWBT will not release Birch's performance measurement source data to enable Birch to verify SWBT's statistics until Birch executes the T2A. Further, the performance measures do not capture other situations such as when a customer decides to switch its local service provider from SWBT to Birch and information on the customer service record ("CSR") is incorrect. A CLEC must rely on SWBT's CSR to order service that mirrors that which was being provided by SWBT. Detailed information, including any conditioning on the line, is not on the CSR. As a result, when the service is provisioned according to the service that the customer selects, SWBT classifies any trouble as "CLEC error" and does not count the resulting trouble reports in its performance measurements.

III. Checklist Item (iv) – Unbundled Local Loops.

As recognized in the DOJ's Evaluation and discussed in the initial comments of ALTS and the CLEC Coalition, SWBT's performance providing hot cuts and DSL-loops clearly shows that it has not met this checklist item.

A. Hot Cuts.

1. Frame Due Time.

Based on the inadequacies of its filing and commercial experience in Texas, CLECs have concluded that SWBT is unable to show that it can consistently, reliably provision loops.[77]

[76] *See*, Ham Affidavit at ¶ 224.

Currently, SWBT provides two methods of conducting a transfer of service on a line that is in use: Coordinated Hot Cuts ("CHC") and Frame Due Time ("FDT"). To monitor SWBT's performance regarding the cutover of loops, two performance measures are employed: (1) PM No. 114 for premature cutovers, and (2) PM No. 115 for delayed cutovers that occur outside the allowable window for the disconnection and transfer of service. With regard to both of these metrics, SWBT claimed in its Application that it was meeting the performance benchmarks.[78]

In its January 21, 2000 *Ex Parte* Submission, SWBT reported an increase in the number of FDT cutovers for December 1999. The increase in the number of FDT cutovers occurred at SWBT's suggestion, owing to the fact that so many problems were occurring in conjunction with CHCs. Despite the use of this agreed upon method for performing cutovers, SWBT failed to follow its own procedures at least 30% of the time for the months of October to December 1999, creating service problems for CLECs.[79] Even more worrisome is the fact that SWBT still continued to prematurely cutover some customers' service one or more days *before* the designated frame due time.[80] At SWBT's insistence, AT&T conducted a limited test of FDT in August 1999, and found that provisioning errors caused by SWBT negatively impacted 53% of AT&T's customers.[81] Once a root cause analysis was performed, it was determined that

---

[77] SWBT's December 1999 *ex parte* data revealed that only 51% of CHCs were performed in 30 minutes or less. CompTel Comments at p. 15. *See*, Comments of AT&T, CLEC Coalition, and CapRock Communications.

[78] SWBT Dysart Affidavit, Attachments A, at pp. 137-138 and R, at p. 29.

[79] *See*, CompTel Comments at pp. 15-16. CapRock Communications determined that in violation of SWBT's procedures, SWBT often prematurely cut over CapRock customers in advance of the designated frame due time. CapRock Communications Thompson Affidavit at ¶ 19.

[80] *Id.* at p. 16.

[81] AT&T Comments at p. 31.

SWBT's poor provisioning was due primarily to SWBT's failure to train its central office personnel on methods and procedures applicable to the FDT process.[82]

2. Coordinated Hot Cuts.

The provisioning of loops using CHC by SWBT is certainly not any better than its use of FDT. Despite the fact that PM Nos. 114 and 115 address only premature and delayed cuts, not defective cuts,[83] there is much evidence in the record to support the conclusion that SWBT's coordinated hot cut procedures are not commercially ready and are far below the performance of Bell Atlantic. Even when SWBT agreed with ICG that as a general matter a "lift and lay" should take around 15 minutes per line, SWBT has not been able to perform within this general constraint. As a matter of commercial practice, ICG has experienced tremendous inconsistencies with SWBT's cutovers, including customers with as few as eight lines being without dial tone for eight hours.[84] AT&T and MCI have found that for the period of August through October 1999, SWBT was unable to provision CHCs in a manner consistent with this Commission's mandates.[85] In addition, NEXTLINK frequently receives SWBT facilities that are not even operational when delivered, essentially preventing NEXTINK from properly provisioning its

---

82 *Id.*

83 Defective cuts may generally be considered to be those cuts that continue in duration longer than would be indicated by industry standards.

84 *See*, Initial CLEC Coalition Comments at pp. 41-42 and ICG Rowling Affidavit at ¶ 23.

85 *See*, AT&T Comments at pp.32-33; during UNE-L testing, MCI demonstrated the existence of numerous CHC problems that included loss of dial tone and failed disconnects. These problems occurred with a very small number of orders and clearly do not suggest that SWBT is capable of performing these procedures in an acceptable manner in the context of commercial volumes. MCI Comments—Joint Affidavit of McMillon & Sivori, ¶¶ 177 and 178.

customers.[86] More importantly, it does not appear that SWBT has implemented concrete, systemic changes to insure that current problems with CHC procedures are resolved.[87]

B. SWBT's Application Fails to Demonstrate that it is Providing DSL-Capable Loops on a Nondiscriminatory Basis as Required by the FTA.

Utilization of existing copper loops to provide broadband services through DSL technology offers a significant opportunity to make advanced services widely available to small business and residential customers. Covad, Rhythms and NorthPoint recognized this market opportunity early on, before SWBT made its ADSL service available, but these competitors' ability to serve this market requires access to SWBT's copper loops. One of the weakest aspects of SWBT's 271 Application concerns SWBT's record in provisioning DSL-capable loops. Indeed, ALTS and the CLEC Coalition, as well as most DSL providers, consider this weakness to be so great that the Application must be denied.

Comments filed by DSL providers and by the DOJ point out in detail the errors and inadequacies in SWBT's performance data and Telcordia's obvious failure to rigorously examine SWBT's DSL-loop ordering and provisioning processes. The presence of these problems alone would warrant particular Commission scrutiny of DSL-loop provisioning. When combined with SWBT's historical record of delay and obstructionism in dealing with DSL competitors, the need to delve beyond the glib assertions in SWBT's affidavits becomes imperative. It is SWBT's actual performance that must be found to satisfy checklist item (iv) if SWBT's Application is to be approved. As several parties noted in their Comments, SWBT cannot rely on its non-operational affiliate to show compliance with this portion of the checklist. A close look at SWBT's performance in this area reveals both significant problems and a lack of reliable data that preclude a finding that SWBT has met its checklist obligations with respect to DSL-capable loops.

---

[86] *See*, Initial CLEC Coalition Comments at p.42 and NEXTLINK Barron Affidavit at ¶¶ 24-26.

[87] *See*, MCI Comments at p. 28 discussing the fact that MCI experienced significant problems with the CHC process.

1. SWBT's Performance Does Not Satisfy the Obligation to Provide Nondiscriminatory Access as Required by Checklist Item (iv).

There are two means by which SWBT could demonstrate that checklist item (iv) is satisfied–submission of comprehensive and accurate performance metrics showing nondiscriminatory access to DSL-capable loops or creation of a fully operational separate affiliate that will provide advanced services, thereby preventing discrimination.[88] The Commission's stated preference is for "a record that contains data measuring a BOC's performance pursuant to state-adopted standards that were developed with input from the relevant carriers and that include clearly-defined guidelines and methodology."[89] These measures should include "for instance, the average completion interval, the percent of installation appointments missed as a result of the BOC's provisioning error, the timeliness of order processing, the installation quality of xDSL loops provisioned, and the timeliness and quality of the BOC's xDSL maintenance and repair functions."[90]

The TPUC, SWBT and the parties all have expended great efforts to develop performance measures that would reveal whether SWBT's provision of service to its competitors satisfies the checklist requirements of the FTA. For many of the individual measures, reported data indicate SWBT's compliance, but for the measures dealing with SWBT's provision of DSL-capable loops this is not the case.

a) The Performance Data on which SWBT Relies are Inherently Flawed.

NorthPoint and Covad contend that the data on which SWBT's performance measures are calculated are wrong. NorthPoint states, for example, that its review of data filed by SWBT in

---

88 *See*, Bell Atlantic New York Order, ¶¶ 330-331. It should be noted that the FCC's Order states that a fully-operational affiliate "may provide significant evidence" of nondiscrimination. Thus, the mere presence of a fully operational affiliate, by itself, is no guarantee that the BOC's conduct is nondiscriminatory.

89 *Id.* at ¶ 334.

90 *Id.*

its Application and in the performance reports SWBT provides to NorthPoint show that "key performance metrics are based on erroneous and inconsistent data that undermine their value substantially."[91] Among the specific errors NorthPoint identifies are (1) SWBT's report that NorthPoint has ordered *zero* DSL-capable loops, when in fact NorthPoint has ordered more than 1,000 such loops, and (2) SWBT's report that all CLEC orders totaled 164 DSL-capable loops between August and December, while SWBT purportedly received 2,019 requests for loop makeup information during this same period.[92]

Covad states that the performance measures for return of FOCs and average installation time exclude half or more of Covad's orders.[93] Covad's comparison of SWBT's reported performance under PM No. 5, PM No. 55.1 and PM No. 57 and Covad's actual results indicates that the failure to include all of Covad's orders has the effect, intentional or not, of significantly improving SWBT's claimed performance.[94] SWBT reports performance levels for PM No. 5-17 (UNE Loop FOCs Received-Manual) ranging from 63.5% to 97% returned within 24 hours during the September-December 1999 period, while Covad's actual experience ranged from an abysmal 11.47% to a mediocre 64.66%.[95]

ALTS and the CLEC Coalition find the omission of DSL-capable loop orders extremely troubling. Moreover, the huge disparity between SWBT's reported performance and Covad's actual experience shows that something fundamental is wrong. Absent further analysis of the data and the sources of this disparity, it is impossible to consider SWBT's reports an accurate indicator of its performance.

---

91 *See,* NorthPoint Comments at p. 8.

92 *Id.* at pp. 9-10.

93 *See,* Covad Comments at pp. 20-21.

94 *Id.* at pp. 27-31.

95 *Id.* at p. 28.

b) The Calculation of at Least One Performance Metric on which SWBT Relies is Flawed Because It Omits Key Information and Has Subsequently Been Revised.

In its Comments, NorthPoint states that SWBT's calculation of the time frames on which an essential performance measure is based omitted activities that for NorthPoint had been sources of delays. Performance Measure No. 57 (Average Response Time for Loop Qualification) originally was defined by SWBT as starting when a SWBT employee began the internal process of loop qualification and ended when that process was finished, thus omitting completely the time between receipt of a CLEC's order and SWBT's employee beginning the qualification process as well as the time between conclusion of that process and delivery of the information to the CLEC.[96] As DOJ's Comments note, SWBT has known since the Commission's Order approving the SWBT/Ameritech merger that defining the measure in this manner was wrong.[97] The Commission's Order specifically states that the time starts when a request is received by the ILEC and ends when the information on the loop qualification has been made available to the CLEC.[98]

c) SWBT's Performance Indicates that Significant Inequalities Exist.

Mr. Dysart's Affidavit shows that, contrary to SWBT's assertions, its performance has been less than stellar when compared to its contractual obligations. For example, PM No. 55.1 (Average Installation Interval) shows that in November 1999 DSL-loop installations in Houston took an average of 11 days, while conditioned DSL-loop installations took an average of 31 days; both of these intervals significantly exceeded SWBT's contracted for time frames of 7 and 15 days respectively.[99] Mr. Dysart's explanation, that CLECs request due dates beyond the 7-

---

96 *See*, NorthPoint Comments at p.11.

97 *See*, DOJ Evaluation at p. 12.

98 *See*, SBC/Ameritech Merger Order, App. C, Attachment A, at A-34.

99 *See*, NorthPoint Comments at pp. 12-13.

and 15-day intervals, is improbable given customer desires to obtain communications services in the shortest possible time.

Covad's experience suggests that SWBT's loop qualification process may be the cause of the delay.[100] According to Covad, SWBT's internal spectrum management standards that apply to its own ADSL retail offering work against CLECs' orders by causing them to be rejected, and then requiring the CLECs to request another, subsequent due date.[101] If so, not only are the data skewed and thus unreliable, but the loop qualification process itself raises questions as to SWBT's nondiscriminatory treatment of its competitors. In particular, proof of SWBT's compliance with the TPUC's order to cease using its spectrum management plan becomes necessary.

DOJ notes in its Comments that SWBT submitted corrected data for PM No. 55.1 on February 1, 2000, but failed to note that changes in the data had been made or explain the reason for the revisions or the actions it was taking to detect other such errors.[102] DOJ also observed that performance data for individual CLECs had not been supplied to them, thus there is still no assurance that even the corrected data are accurate.[103]

Examination of other performance measures shows a lack of parity between SWBT's own services and the treatment accorded to CLECs. For example, PM No. 58-9 (SWBT-Caused Missed Due Dates) for DSL-loops and PM No. 58-13 (SWBT-Caused Missed Due Dates) for dark fiber show significant out-of-parity situations.[104] In addition, performance measures for trouble reports on installed DSL-loops and for missed due dates for lack of facilities show a

---

100 *See*, Covad Comments at p. 30.

101 *See*, Covad Smith Declaration.

102 *See*, DOJ Evaluation at p. 16.

103 *See, Id.*

104 *See, Id.* at p. 18 and Covad Comments at p. 39.

similar and disturbing lack of parity.[105] Data for PM No. 59 for December 1999 show trouble reports at a 15.8 % for CLECs and only 5.2 % for SWBT retail lines (more than three times higher for CLECs); data for PM No. 65 for the same month show repair rates of 7.7 % for CLECs and 4.6 % for SWBT.[106] And, there appears to be a clear trend of deteriorating SWBT performance as the number of DSL-loop orders increase, despite the fact that commercial volumes have yet to be attained.[107]

ALTS and the CLEC Coalition agree with the DOJ and other commenters that, if SWBT's performance data prove *anything* with respect to DSL-capable loops, it is that competitors are seriously disadvantaged in their efforts to serve their customers. ALTS and the CLEC Coalition are very concerned that this situation will grow worse rather than better if SWBT's Application is approved.

d) The Manual Processes on which SWBT Relies for Handling CLEC Orders for DSL-Capable Loops Cause Errors and Delays that Impair CLECs' Ability to Provide xDSL Services and These Problems Do Not Show Up In Performance Data.

As stated above, and as discussed in detail in the affidavits submitted with Covad's and NorthPoint's Comments, SWBT's ordering and loop qualification process erroneously rejects orders for loops that do not meet SWBT's internal standard for loop length limitations, requiring needless resubmission of orders.[108] While these problems significantly diminish CLECs' ability to serve their customers, they are not tracked by the performance measures themselves nor are they apparent in the business rules on which the underlying data are collected and performance calculated.

---

105 *See*, Covad Comments at pp. 39-42.

106 *See*, DOJ Evaluation at p. 20.

107 *Id.* at pp. 20-23.

108 *See*, NorthPoint Comments at p. 14 and Covad Comments at pp. 30-31.

2. The Mere Existence of a Non-Operational Advanced Services Affiliate Does Not Satisfy the Requirements the Commission Has Established.

SWBT asserts in its Brief that its advanced services affiliate, ASI, satisfies the Commission's alternative means of showing that it is offering nondiscriminatory access to DSL-capable loops.[109] ASI was not operational in Texas at the time SWBT's Application was filed, however, with the result that there are no data or information on its activities and interaction with SWBT in this record.

The Commission was specific in requiring that the advanced services affiliate be an operational reality. Its directive to BOCs filing applications subsequent to Bell Atlantic's Application for New York, states that the Commission expects "a separate and comprehensive showing with respect to the provision of xDSL-capable loops, either through proof of a *fully operational advanced services separate affiliate* . . . or through a showing of nondiscrimination in accordance with the guidance provided herein."[110] There can be no comprehensive showing of nondiscrimination if the affiliate exists only on paper and has no tangible experience with the ordering, provisioning, and maintenance functions the BOC performs for its wholesale customers. Indeed, it would be nonsense to require, on the one hand, that SWBT submit evidence of its compliance with detailed performance standards while on the other hand permitting SWBT to merely create a legal entity to be its advanced services affiliate. The Commission could never have intended such contradictory options. If the existence of an affiliate is to provide assurances of nondiscriminatory treatment, it must be real.

In this case, SWBT's affiliate was not real at the time SWBT's Application was filed. ASI had ordered no services and received no loops from SWBT in January, 2000. SWBT's own

---

109 *See,* SWBT Brief in Support of Application at p. 43.

110 *See,* Bell Atlantic New York Order at ¶ 330 (emphasis added).

submission shows that ASI will not become operational in Texas and will not use the OSS available to other CLECs in Texas until February 28, 2000.[111]

Furthermore, as AT&T's Comments show, ASI is not sufficiently "separate" to ensure that CLECs are or will be receiving nondiscriminatory treatment.[112] No one looking at the list of services SWBT has contracted to provide to ASI could conclude that ASI is operating anything like an independent entity. ASI obtains marketing and ordering services, purchasing services, network planning and engineering, and installation and maintenance services from SWBT.[113]

Based on the evidence in the record, SWBT cannot rely on its creation of ASI to support its entry into the long distance market.

IV. SWBT Relied on Inadequate Performance Measures.

Certain performance measures used by SWBT are inadequate to support its Application. Where the performance measures do not support the required demonstration for a particular checklist item, this Commission has concluded that the Applicant must do more to meet the burden of proof.[114] SWBT has failed to make the required showing.

Specifically, with respect to the checklist items for coordinated hot cuts, unbundled loop provisioning, receipt of service order completions, and the provision of UNEs, SWBT's performance measures fail to demonstrate that SWBT offers these services in parity with SWBT's provision of the services to itself. SWBT's failure to provide these checklist items in

---

111 SWBT Brief at p. 44; SWBT Brown Affidavit at ¶ 5.

112 AT&T Comments at pp. 25-27.

113 Specific agreements listed on SBC's web page include the following: Executive Customer Contact Services; Customer Services Support; Premise Sales Support; Residence Service Support; Operations, Installations and Maintenance; Non-Management Staffing; Installation and Maintenance; Affiliate Insert in Telco Bill; Technical Support Services; and Network Planning and Engineering. (sbc.com/PublicAffairs/PublicPolicy/Regulatory/swb 2asbc_nts)

114 *See*, Bell Atlantic New York Order at ¶ 55 and 56.

parity with its own services means that CLECs are deprived of a meaningful opportunity to compete in the market. The Evaluation of the DOJ points out the deficiencies in the performance measures used by SWBT.[115]

Regarding hot cuts, the performance measure data submitted to the TPUC by SWBT did not include a measure of the time it took for completion of a hot cut procedure.[116] CLECs have experienced significant difficulty in SWBT successfully completing hot cuts on a timely basis.[117] Performance Measure No. 114 measures premature hot cuts, and PM No. 115 measures hot cut delays, no performance measure is available to demonstrate the total time required for completion of a hot cut procedure. In response to this recognized deficiency, SWBT has promised to implement an interim performance measure, PM No. 114.1, to measure the duration of a hot cut. However, SWBT has designed this new measure to record the time for SWBT internal processing, it does not include the time necessary for SWBT to notify the CLEC of the completion of the cut, which information is critical to determine SWBT's performance. This notification is necessary for the end use customer to receive fully functional service.[118]

There is no performance measurement to account for the accuracy of the type of service associated with unbundled loop orders. Incorrect provisioning of unbundled loops is a chronic problem which is encountered by CLECs on virtually a daily basis.[119] The experience of CLECs attempting to provide service in the market shows that SWBT has consistent problems with loop

---

115 *See generally*, DOJ Evaluation.

116 *See*, SWBT Dysart Affidavit at ¶ 659 and SWBT Conway Affidavit at ¶ 87.

117 *See*, ICG Rowling Affidavit at ¶ 23; *See* also, NEXTLINK Barron Affidavit at ¶ 26.

118 *See*, DOJ Evaluation at p. 32, citing AT&T DeYoung Hot Cuts Declaration.

119 *See*, ICG Rowling Affidavit at ¶ 26.

provisioning. For instance, SWBT incorrectly logs loops as accepted by CLECs prior to testing and verification by the CLEC.[120] CLEC experience reveals repeated instances where SWBT has failed to deliver the correct number of loops and even instances where no loops have been provisioned, while the SWBT technician incorrectly has logged the loops as installed.[121] In these instances, where the loops are inadequately provisioned or not provisioned at all, the CLECs' only recourse is to submit a new order.[122] The performance measures do not capture this systemic and critical flaw in SWBT's provision of unbundled loops.

In addition, SWBT has not provided a sufficient measurement of the response time for loop qualification. SWBT's reliance on PM No. 57 to demonstrate its performance regarding the time it takes to conduct loop qualification work is insufficient. Performance measure No. 57 includes only the time period during which the SWBT technician worked on the loop qualification request.[123] This performance measure is inadequate because it does not include the more important time period from the time SWBT receives the CLEC's request to the time it takes SWBT to respond to the CLEC that the request was completed.[124] This is the type of common sense information that CLECs and the TPUC need to determine timelines of SWBT's loop make-up work. Thus, SWBT performance measures do not demonstrate that SWBT provides loop qualification information to CLECs in parity with its retail division.[125]

---

120 *Id.* at ¶ 23.

121 *Id.* at ¶ 24.

122 *Id.*

123 *See*, DOJ Evaluation at p. 12 – 13.

124 *Id.*

125 *Id.*; also *see* Comments of NorthPoint, Covad and Rhythms.

In attempting to use the LEX system, CLECs have experienced problems with receiving service order completions ("SOC") that are not captured by any performance measure used by SWBT.[126] Performance Measure No. 7.1 measures the time between the completion of an order and when the SOC is received by the CLEC.[127] However, this measure does not capture those repeated instances where SWBT fails to even present an SOC.[128] The failure to return a SOC, which is not reflected in any existing performance measure, prevents CLECs from having a meaningful opportunity to compete for a number of reasons, including, the fact that when a SOC is not provided to the CLEC, the customer's 911 records remain locked in SWBT's systems preventing SWBT from migrating the customer from SWBT to their chosen CLEC.[129] Also, when SWBT does not return a SOC, the customer often continues to be billed by SWBT, although the customer is now a CLEC end user.

V. A Reasonable Degree of Market Certainty is Essential to an Open Market.

The TPUC correctly notes that many of SWBT's 271 commitments are embodied in the T2A interconnection agreement.[130] According to a recent SWBT filing in Project 16251, over 60 CLECs have entered into the T2A.[131] Birch Telecom and several other members of ALTS have taken the T2A and are greatly concerned about the fact that the agreement will expire in October

---

126 *Id.* at ¶ 37.

127 *Id.*

128 *Id.*; also *see,* DOJ Evaluation at fn 114.

129 *Id.* at 38.

130 TPUC Evaluation Comments at p. 30.

131 Reply of SWBT to Comments filed Pursuant to Order No. 61, TPUC Project 16251, February 17, 2000, p. 2.

of this year if SWBT's 271 Application is not granted by the Commission. This "one year with a three year extension if 271 relief is granted" scenario is the result of the TPUC's Memorandum of Understanding with SWBT, not negotiations with each CLEC. However, the TPUC has consistently premised its support for SWBT's Application on the T2A being a four-year agreement. The CLECs that have taken the T2A are implementing their business plans and network operations based on the terms of their agreement with SWBT and, if SWBT's Application is denied, need such agreements to continue in effect for the full four-year period contemplated by the TPUC. ALTS and the CLEC Coalition expect that the deficiencies in SWBT's Application can be corrected and a new application could be filed and granted in the near future. Whatever the Commission ultimately determines about whether SWBT is currently in compliance with 271, the Commission must make clear that SWBT's refusal to make the agreement a four-year agreement even in the absence of FCC approval is not acceptable. The Commission's decision on SWBT's Application should ensure that the T2A is available for the full four years contemplated by the TPUC.

CONCLUSION

Ensuring that a local exchange market is irreversibly open to competition is an enormous responsibility. Without question, SWBT has made significant strides in opening its local markets in Texas. But it has not yet crossed the finish line. Before SWBT is granted 271 relief, the Commission must ensure that SWBT's performance is being correctly captured and reported and that unbundled local loops are being provided timely and accurately.

SWBT's Application suffers from discrete and identifiable failures to implement the FTA's 271 checklist items. SWBT's OSS evidence reveals serious shortcomings which prevent SWBT from providing its operational systems to CLECs at parity. SWBT has significant problems with the provision of UNE-P and hot cuts. More importantly, these problems, and

others, were identified by CLECs, Telcordia, and the TPUC as significant customer-affecting problems. SWBT's problems are systemic. These problems must be resolved **prior to** SWBT obtaining section 271 authority.

CASEY, GENTZ & SIFUENTES, L.L.P.
919 Congress Ave., Ste. 1060
Austin, Texas 78701
512/480-9900
512/480-9200 FAX

By: _____
Robin A. Casey
Texas State Bar No. 03960300
Eric H. Drummond
Texas State Bar No. 00785829

Attorneys for ICG Communications, Inc.; NEXTLINK Texas, Inc.; Birch Telecom of Texas, Ltd., L.L.P. and Time Warner Telecom of Texas, L.P.